

JS-44 civil cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for use of the Clerk of the Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

ARRIGO BROS. CO. OF NEW YORK, INC.

DEFENDANTS

GARY DIMICCO

ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

KREINCES & ROSENBERG, P.C.  
900 MERCHANTS CONCOURSE  
WESTBURY, NEW YORK 11590  
(516) 227-6500

ATTORNEYS (IF KNOWN)

APR 12 2007

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Action pursuant to the Perishable Agricultural Commodities Act 7 USC §499 (e)(c) for the enforcement of trust benefits.

Is this or a similar case been previously filed in SDNY at anytime? No ☒ Yes ☐ Judge Previously Assigned \_\_\_\_\_

If yes, was this case Vol. \_\_\_\_\_ Invol. \_\_\_\_\_ Dismissed, No \_\_\_\_\_ Yes \_\_\_\_\_ If yes, give date \_\_\_\_\_ &amp; Case No. \_\_\_\_\_

PLACE AN [X] IN ONE BOX ONLY

## NATURE OF SUIT

CONTRACT		TORTS		ACTIONS UNDER STATUTES	
110 INSURANCE	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
120 MARINE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 400 STATE
130 MILLER ACT	[ ] 315 AIRPLANE	[ ] MED MALPRACTICE	[ ] 620 FOOD & DRUG	28 USC 158	REAPPORTIONMENT
140 NEGOTIABLE INSTRUMENT	PRODUCT LIABILITY	[ ] 365 PERSONAL INJURY	[ ] 625 DRUG RELATED SEIZURE OF	[ ] 423 WITHDRAWAL	[ ] 410 ANTITRUST
150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT	[ ] 320 ASSAULT, LIBEL & SLANDER	PRODUCT LIABILITY	PROPERTY	28 USC 157	[ ] 430 BANKS & BANKING
151 MEDICARE ACT	[ ] 330 FEDERAL EMPLOYERS' LIABILITY	[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	21 USC 881	PROPERTY RIGHTS	[ ] 450 COMMERCE/ICC RATES/ETC.
152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	[ ] 340 MARINE LIABILITY	PERSONAL PROPERTY	[ ] 630 LIQUOR LAWS	[ ] 820 COPYRIGHTS	[ ] 460 DEPORTATION
153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS	[ ] 345 MARINE PRODUCT LIABILITY	[ ] 370 OTHER FRAUD	[ ] 640 R.R. & TRUCK	[ ] 830 PATENT	[ ] 470 RACKETEER
160 STOCKHOLDERS' SUITS	[ ] 350 MOTOR VEHICLE PRODUCT LIABILITY	[ ] 371 TRUTH IN LENDING	[ ] 650 AIRLINE REGS	[ ] 840 TRADEMARK	INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
190 OTHER CONTRACT	[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY	[ ] 380 OTHER PERSONAL PROPERTY DAMAGE	[ ] 660 OCCUPATIONAL SAFETY/HEALTH	SOCIAL SECURITY	[ ] 810 SELECTIVE SERVICE
195 CONTRACT PRODUCT LIABILITY	[ ] 360 OTHER PERSONAL INJURY	[ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY	LABOR	[ ] 861 MIA (1395FF)	[ ] 850 SECURITIES/COMMODITIES/EXCHANGE
REAL PROPERTY	ACTIONS UNDER STATUTES	PRISONER PETITIONS	[ ] 710 FAIR LABOR STANDARDS ACT	[ ] 862 BLACK LUNG (923)	[ ] 875 CUSTOMER CHALLENGE
210 LAND CONDEMNATION	CIVIL RIGHTS	[ ] 510 MOTIONS TO VACATE SENTENCE	[ ] 720 LABOR/MGMT. RELATIONS	[ ] 863 DIWC(405(g))	12 USC 3410
220 FORECLOSURE	[ ] 441 VOTING	[ ] 530 HABEAS CORPUS	[ ] 730 LABOR/MGMT. DISCLOSURE ACT	[ ] 864 SSID TITLE REPORTING	[X] 891 AGRICULTURE ACTS
230 RENT LEASE & EJECTMENT	[ ] 442 EMPLOYMENT	[ ] 535 DEATH PENALTY	[ ] 740 RAILWAY LABOR ACT	[ ] 865 RSI(405(g))	[ ] 892 ECONOMIC STABILIZATION ACT
240 TORTS TO LAND	[ ] 443 HOUSING/ACCOMMODATIONS	[ ] 540 MANDAMUS & OTHER	[ ] 790 OTHER LABOR LITIGATION	FEDERAL TAX SUITS	[ ] 893 ENVIRONMENTAL XVI MATTERS
246 TORT PRODUCT LIABILITY	[ ] 444 WELFARE	[ ] 550 CIVIL RIGHTS	[ ] 791 EMPL. RET. INC. SECURITY ACT	[ ] 870 TAXES	[ ] 894 ENERGY ALLOCATION ACT
290 ALL OTHER REAL PROPERTY	[ ] 440 OTHER CIVIL RIGHTS			[ ] 871 IRS-THIRD PARTY 20 USC 7609	[ ] 895 FREEDOM OF INFORMATION ACT
					[ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
					[ ] 950 CONSTITUTIONALITY OF STATE STATUTES
					[ ] 890 OTHER STATUTORY ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_

JUDGE: \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint:

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

TRY DEMAND: ☒ YES ☐ NO

(SEE REVERSE)

AN X IN ONE BOX ONLY)

Original  
Filing☐ 2 Removed from  
State Court☐ 3 Remanded from  
Appellate Court☐ 4 Reinstated or  
Reopened☐ 5 Transferred from  
(Specify Dist.)☐ 6 Multidistrict  
Litigation☐ 7 Appeal to District  
Judge from  
Magistrate Judge  
JudgmentAN X IN ONE BOX ONLY)  
U.S. PLAINTIFF☐ 2 U.S. DEFENDANT

## BASIS OF JURISDICTION

☒ 3 FEDERAL QUESTION  
(U.S. NOT A PARTY)☐ 4 DIVERSITYIF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [x] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE

PTF DEF  
[ ] [ ]CITIZEN OR SUBJECT OF A  
FOREIGN COUNTRYPTF DEF  
[ ] [ ]INCORPORATED AND  
PRINCIPAL PLACE OF BUSINESS  
IN ANOTHER STATEPTF DEF  
[ ] [ ]

CITIZEN OF ANOTHER STATE

[ ] [ ]

INCORPORATED OR  
PRINCIPAL PLACE OF  
BUSINESS IN THIS STATE

[ ] [ ]

FOREIGN NATION

[ ] [ ]

PLAINTIFF'S ADDRESS AND COUNTY (Calendar Rule 4(A))

ARRIGO BROS. CO. OF NEW YORK, INC.  
5 NYC Terminal Market  
Bronx, New York 10474  
County of Bronx

DEFENDANT'S ADDRESS AND COUNTY (Calendar Rule 4(A))

ARY DIMICCO  
301 Second Avenue  
Elizabeth, New Jersey 07202

DEFENDANT'S ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE  
ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE CLASSIFIED:

☐ Expedited☒ Standard☐ Complex☐ Unknown

Check one: THIS ACTION SHOULD BE ASSIGNED TO :

☐ WHITE PLAINS ☒ FOLEY SQUARE

(DO NOT check either box if this is a PRISONER PETITION.)

DATE:  
April 11, 2007SIGNATURE OF ATTORNEY OF RECORD  
/s/ LEONARD KRENCES, ESQ.

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO  
[x] YES (DATE ADMITTED Mo 9 Yr 60)  
Attorney Bar Code # LK-6524

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

James M. Parkison, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

# United States District Court

Southern District of New York

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

D'ARRIGO BROS. CO. OF NEW YORK, INC.,

Plaintiff,

-against-

GARY DIMICCO,

Defendant.

SUMMONS IN A CIVIL ACTION

Case No.:

**07 CV 29**

**JUDGE KOELT**

(Name and Address of Defendant)  
GARY DIMICCO  
Second Avenue  
Elizabeth, New Jersey 07202

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court  
your answer to the complaint served upon you.

YOUR ATTORNEYS: (name and address)  
**ES & ROSENBERG, P.C.**  
Atlantic Concourse  
New York 11590  
500

the complaint which is herewith served upon you, within **twenty (20)** days after service of this  
summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against  
you as demanded in the complaint.

**PAUL McMAHON**

ERK

DATE

APR 12 2007

JUDGE KOEHL

07 CV 2926

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

D'ARRIGO BROS. CO. OF NEW YORK, INC.,

Plaintiff,

-against-

GARY DIMICCO,

Defendant.

Case No.:

APR 12 2007

COMPLAINT (to Enforce Payment  
From Produce Trust)

D'ARRIGO BROS. CO. OF NEW YORK, INC. (hereinafter referred to as "D'ARRIGO" or "plaintiff"), for its complaint against defendant, alleges:

#### JURISDICTION AND VENUE

1. Jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e(c)(4), (hereinafter "the PACA"), 28 U.S.C. §1331 and 28 U.S.C. §1332.
2. Venue in this District is based on 28 U.S.C. §1391 in that the events constituting the claims arose in this District.

#### PARTIES

3. Plaintiff is a corporation engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate commerce. At all times pertinent herein, plaintiff was licensed as a dealer under the provisions of PACA.

4. Defendant, GARY DIMICCO (hereinafter referred to as "DIMICCO" or "defendant"), upon information and belief, is a New Jersey corporation with a principal place of

business at 801 Second Avenue, New Jersey, and was at all times pertinent herein, a dealer and commission merchant and subject to and licensed under the provisions of the PACA as a dealer and commission merchant.

5. At all times hereinafter mentioned, the defendant was a dealer and commissioned merchant and subject to and licensed under the provisions of the PACA as a dealer and commissioned merchant.

#### **GENERAL ALLEGATIONS**

6. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. §499e(c).

7. Plaintiff sold and delivered to defendant, in interstate commerce, \$19,716.50 worth of wholesale quantities of produce.

8. Defendant has failed to pay for the produce when payment was due, despite repeated demands and presently owes plaintiff \$19,716.50.

9. At the time of receipt of the produce, plaintiff became a beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust consists of all produce or produce-related assets, including all funds commingled with funds from other sources and all assets procured by such funds, in the possession or control of each defendant since the creation of the trust.

10. Plaintiff preserved its interest in the PACA trust in the amount of \$19,716.50 and remains a beneficiary until full payment is made for the produce.

11. The defendant is experiencing severe cash flow problems and is unable to pay

plaintiff for the produce plaintiff supplied.

12. The defendant's failure and inability to pay shows that the defendant is failing to maintain sufficient assets in the statutory trust to pay plaintiff and is dissipating trust assets.

**COUNT 1 AGAINST DEFENDANT  
(FAILURE TO PAY TRUST FUNDS)**

13. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 12 above as if fully set forth herein.

14. The failure of defendant to make payment to plaintiff of trust funds in the amount of \$19,716.50 from the statutory trust is a violation of the PACA and PACA regulations, and is unlawful.

WHEREFORE, plaintiff requests an order enforcing payment from the trust by requiring immediate payment of \$19,716.50 to plaintiff.

**COUNT 2 AGAINST DEFENDANT  
(FAILURE TO PAY FOR GOODS SOLD)**

15. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 14 above as if fully set forth herein.

16. Defendant failed and refused to pay plaintiff \$19,716.50 owed to plaintiff for produce received by defendant from plaintiff.

WHEREFORE, plaintiff requests judgment in the amount of \$19,716.50 against the defendant.

**COUNT 3 AGAINST DEFENDANT  
(INTEREST AND ATTORNEY'S FEES)**

17. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 16 above

as if fully set forth herein.

18. As a result of defendant's failure to make full payment promptly of \$19,716.50, plaintiff has lost the use of said money.

19. As a further result of defendant's failure to make full payment promptly of \$19,716.50, plaintiff, has been required to pay attorney's fees and costs in order to bring this action to require defendant to comply with their statutory duties.

WHEREFORE, plaintiff requests judgment against the defendant for prejudgment interest, costs and attorneys fees.

Dated this 9<sup>th</sup> day of April, 2007.

Respectfully submitted,

KREINCES & ROSENBERG, P.C.

By: 

LEONARD KREINCES (LK/6524)

Attorneys for Plaintiff

900 Merchants Concourse, Suite 305

Westbury, New York 11590

(516) 227-6500



07 CV 2926

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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D'ARRIGO BROS. CO. OF NEW YORK, INC.,

Plaintiff,

-against-

GARY DIMICCO,

Defendant.

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CASE NUMBER:

APR 12 2007

Pursuant to Rule 7 of the Local Rules of the U.S. District Court for the Southern and Eastern Districts of New York and to enable Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for **Plaintiff** (A private non-governmental party) certifies that the following are corporate parents, affiliates and/or subsidiaries of said party which are publicly held.

NONE

Date: Westbury, New York  
April 9, 2007

KREINCES & ROSENBERG, P.C.

By: 

LEONARD KREINCES (LK/6524)  
Attorneys for Plaintiff  
900 Merchants Concourse, Suite 305  
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(516) 227-6500